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WILLIAM C. GENTRY †

† FLORIDA BAR BOARD CERTIFIED CIVIL TRIAL LAWYER

August 16, 2019

Jason R. Gabriel, General Counsel
Office of General Counsel
117 W. Duval Street, Suite 480
Jacksonville, FL 32202

Re: Section 212.055(6), Florida Statutes
General Counsel "Binding Legal Opinion"

Dear Mr. Gabriel:

Scott Cairns, Hank Coxe, and I call upon you to immediately withdraw your "Binding Legal Opinion" and advise the City Council of its duty to place the Resolution on the ballot without further delay.

As you are aware, in *School Board of Clay County, Florida v. Clay County Board of County Commissioners*, the Circuit Court for the Fourth Judicial Circuit approved of and adopted the decision of the Attorney General of the State of Florida that when presented with a resolution by a school board for capital improvements under § 212.055, Florida Statutes, "The governing body [i.e., the City Council] is responsible for placing the resolution on the ballot. It is a responsibility that cannot be avoided . . . [and] imposes on the . . . governing body of the county, the duty and responsibility of placing the issue on the ballot." Op. Att'y Gen. Fla. 98-29 (1998); Opinion of the Circuit Court (hereafter "Opinion", P. 7).

Your "Binding Legal Opinion," which sought to distinguish the above Opinion of the Attorney General, has been debunked by the Circuit Court. Mandamus was denied because the Court found the County has limited discretion to set a reasonable date for the election, but the Court directly addressed the duty of the County to put the matter on the ballot. (Opinion, P. 6). The Circuit Court held that the language of § 212.055(6) is clear: "shall" means mandatory and not discretionary. The Board does have a clear legal duty to place the Resolution on the ballot; a local governing body cannot simply ignore a school board's request and refuse to place the Resolution on the ballot." (Opinion, P. 6, 7) (emphasis supplied).

You have advised the City Council directly contrary to the ruling of the Circuit Court and the previous Opinion of the Attorney General. Although we believe it is clear you should have adhered to the Opinion of the Attorney General from the outset, we respectfully insist that you comply with the Charter of the City of Jacksonville, Article VII, § 7.02, which expressly expunges any binding effect of the General Counsel's opinion if "it is overruled or modified by a court of competent jurisdiction or an opinion of the Attorney General of the State of Florida . . . ." The letter and intent of the Charter requires that you withdraw your Opinion that the City Council may ignore the Resolution and immediately advise the Council that it has a legal duty to place the Resolution on the ballot.

We also call upon you to keep your commitment to advise the Council that it has no authority to modify or change the School Board's Capital Plan. Consistent with the School Board's desire to work with the City in a collegial and collaborative manner, we met with you and President Wilson. In that meeting you assured us that you would advise

the City Council that it has no authority to modify the Resolution. The Council has no authority to indirectly require modifications by threatening to not place the measure on the ballot. Failure to place the matter on the ballot for the public to decide would be a violation of the law. Efforts to engineer changes to the Plan by the City Council would be a violation of the law. And unreasonable delays in placing the measure on the ballot would be a violation of the law.

The recent decision of the Circuit Court reaffirms Florida law that the City Council cannot meddle with the business of the School District or seek to impose its own designs on a School District's plans. The School District, by and through its governing Board—not the City of Jacksonville—has sole, constitutional authority to operate and control the public schools. As expressly recognized by the Circuit Court in its recent decision:

> The local district school boards have the sole authority to levy the sales surtax. This grant of the authority ultimately derives from the authority granted by Article IX, Section 4(b) of the Constitution of the State of Florida, which directs that 'district school boards shall operate, control, and supervise all free public schools in their respective districts . . . ." With this policy-making authority, comes the discretion to decide whether to levy a sale surtax. Any attempt by a county commission to undermine or usurp that authority, through unnecessary delay in setting a Resolution on the ballot, would constitute an abuse of its discretion. (Opinion, P. 10) (emphasis supplied).

Just as you agreed that the Council cannot modify the School Board's Capital Plan, the Council cannot hold a Resolution hostage from placement on the ballot to exact concessions unrelated to the crisis confronted by our public-school children.

The Circuit Court acknowledged that the timing of the placement of the Resolution on the ballot was a matter within the province of the governing body. Nevertheless, the Court specifically identified the exception to this premise: any attempt to "undermine or usurp that authority, through unnecessary delay in setting a resolution on a ballot, would constitute an abuse of its discretion." We respectfully request that you advise the Jacksonville City Council no later than Monday, August 19, 2019, at 9:00 a.m. that it is obligated to place the matter on the ballot and place it on the ballot as soon as reasonably possible.

Sincerely,

W. C. Gentry
Henry M. Coxe III
Scott S. Cairns

WCG:lm
cc: Lori Hershey, Chairman DCPS
Diane Green, DCPS Superintendent
Scott Wilson, President, City Council
Tommy Hazouri, Vice President, City Council